

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

MDL No. 2859

ZIMMER M/L TAPER HIP PROSTHESIS OR M/L TAPER
HIP PROSTHESIS WITH KINECTIV TECHNOLOGY AND
VERSYSFEMORAL HEAD PRODUCTS LIABILITY
LITIGATION

18-MD-2859 (PAC)
18-MC-2859 (PAC)

COMPLAINT

Case No.

This Document Relates to All Actions

*Judith A. Nagel v. Zimmer, Inc., Zimmer US, Inc. and Zimmer
Biomet Holdings, Inc. f/k/a Zimmer Holdings, Inc.*

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1. Plaintiff, Judith A. Nagel, states and brings this civil action in MDL No. 2859, entitled *In Re: Zimmer M/L Taper Hip Prosthesis or M/L Taper Hip Prosthesis with Kinectiv Technology and Versys Femoral Head Products Liability Litigation*, against Defendants Zimmer, Inc., Zimmer US, Inc., and Zimmer Biomet Holdings, Inc.

2. Plaintiff is filing this Short Form Complaint as permitted by this Court's Case Management Order 9, dated February 7, 2019, and hereby incorporates the Master Long Form Complaint filed in MDL No. 2859 by reference.

PARTIES, JURISDICTION AND VENUE

3. Plaintiff, JUDITH A. NAGEL, is a resident and citizen of the State of Pennsylvania and claims damages as set forth below.

4. Venue of this case is appropriate in the United States District Court, District of Pennsylvania. Plaintiff states that but for the Order permitting directly filing into the Southern District of New York pursuant to Case Management Order 9, Plaintiff would have filed in the United States District Court, District of Pennsylvania. Therefore, Plaintiff respectfully request

that at the time of transfer of this action back to the trial court for further proceedings that this case be transferred to the above referenced District Court.

5. Plaintiff brings this action *[check the applicable designation]*:

 X On behalf of himself/herself;
 ~~In a representative capacity as the _____ of the _____ having been
duly appointed as the _____ by the _____ Court of _____. A copy
of the Letters of Administration for a wrongful death claim is annexed
hereto if such letters are required for the commencement of such a claim
by the Probate, Surrogate or other appropriate court of the jurisdiction of
the decedent.~~

FACTUAL ALLEGATIONS

ALLEGATIONS AS TO LEFT-SIDE IMPLANT/EXPLANT SURGERY(IES):

6. Plaintiff Judith A. Nagel was implanted with a Versys Femoral Head in her left hip on or about December 17, 2012, at UPMC Magee Womens Hospital, 300 Halket Street, Pittsburgh, PA by Anthony Digioia, M.D.

7. Plaintiff was implanted with the following femoral stem during the December 17, 2012 implantation surgery:

 X Zimmer M/L Taper
 Zimmer M/L Taper with Kinectiv Technology

8. Plaintiff had the following right components explanted on or about December 31, 2019, at UPMC Magee Womens Hospital, 300 Halket Street, Pittsburgh, PA by Kenneth Urish, M.D.:

 X Versys femoral head

_____ Zimmer M/L Taper

_____ Zimmer M/L Taper with Kinectiv Technology

ALLEGATIONS AS TO INJURIES

9. (a) Plaintiff claims damages as a result of (check all that are applicable):

 X INJURY TO HERSELF/HIMSELF

_____ INJURY TO THE PERSON REPRESENTED

_____ WRONGFUL DEATH

_____ SURVIVORSHIP ACTION

_____ ECONOMIC LOSS

(b) Plaintiff's spouse claims damages as a result of (check all that are applicable):

_____ LOSS OF SERVICES

_____ LOSS OF CONSORTIUM

10. Plaintiff has suffered injuries as a result of implantation of the Devices at issue manufactured by the Defendants as shall be fully set forth in Plaintiff's anticipated Amended Complaint if chosen for bellwether consideration, as well as in Plaintiff's Fact Sheet and other responsive documents provided to the Defendant and are incorporated by reference herein.

11. Plaintiff has suffered injuries as a result of the explantation of the Devices at issue manufactured by the Defendants as shall be fully set forth in Plaintiff's anticipated Amended Complaint if chosen for bellwether consideration, as well as in Plaintiff's Fact Sheet and other responsive documents provided to the Defendant and are incorporated by reference herein.

12. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiff(s).

13. Due to the nature of the defect, Plaintiff(s) could not have known that the injuries

he/she suffered were as a result of a defect in the Devices at issue at the time they were implanted or for any period afterwards until the defect was actually discovered by Plaintiff(s).

CASE-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

14. The following claims and allegations are asserted by Plaintiffs and are herein adopted by reference from the Master Long Form Complaint (check all that are applicable):

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|---------------|--|
| <u> X </u> | COUNT I - NEGLIGENCE; |
| <u> X </u> | COUNT II - NEGLIGENCE PER SE; |
| <u> X </u> | COUNT III - STRICT PRODUCTS LIABILITY - DEFECTIVE DESIGN; |
| <u> X </u> | COUNT IV - STRICT PRODUCTS LIABILITY – MANUFACTURING DEFECT; |
| <u> X </u> | COUNT V - STRICT PRODUCTS LIABILITY- FAILURE TO WARN; |
| <u> X </u> | COUNT VI - BREACH OF EXPRESS WARRANTY; |
| <u> X </u> | COUNT VII- BREACH OF WARRANTY AS TO MERCHANTABILITY; |
| <u> X </u> | COUNT VIII - BREACH OF IMPLIED WARRANTIES; |
| <u> X </u> | COUNT IX - VIOLATION OF CONSUMER PROTECTION LAWS |
| <u> X </u> | COUNT X –NEGLIGENT MISREPRESENTATION |
| <u> X </u> | COUNT XI- FRAUDULENT CONCEALMENT |
| <u> X </u> | COUNT XII - UNJUST ENRICHMENT |
| <u> X </u> | COUNT XIII – LOSS OF CONSORTIUM |
| <u> </u> | COUNT XIV – WRONGFUL DEATH |
| <u> </u> | COUNT XV- SURVIVAL ACTION |

In addition to the above, Plaintiffs assert the following additional causes of action under applicable state law:

_____ PUNITIVE DAMAGES

_____ OTHER: _____

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For all applicable statutory damages of the state whose laws will govern this action;
3. For an award of attorneys' fees and costs;
4. For prejudgment interest and costs of suit;
5. Exemplary damages;
6. For restitution and disgorgement of profits; and,
7. For such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all claims in this action.

Date: December 8, 2020

Respectfully submitted,

/s/Ashleigh E. Raso

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